

## **In the United States Patent and Trademark Office**

Applicants: Ramachandra SHASTRY et al.

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For: **Oral Care Method**

Examiner: Lezah Roberts

Art Unit: 1614

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### **RESPONSE TO OFFICE ACTION**

In response to the Office Action mailed on May 3, 2006, Applicants respond through their attorney as follows. The claims pending in the subject application are 1-34. Reconsideration of this application based on the Remarks presented herein is respectfully requested.

#### **35 U.S.C. §103 REJECTIONS**

Claims 1-16 and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,958,144 to Montgomery in view of United States Patent No. 2,439,056 to Rathbum.

Montgomery '144 discloses that the composition is intended to be applied as a rinse, paste, or gel (column 5, line 2) by using a dental tray (column 2, lines 56-60 and column 4, lines 55-56). There is no other disclosure of an alternative method of application. Without an alternative disclosure, there is no motivation to use any other application methods.

Rathbum '056 discloses cleaning teeth using the applicator. While sodium bicarbonate is disclosed as being in the cleaning formula (column 2, lines 43-55), there is no disclosure of applying any additional treatment to the teeth after cleaning them. In particular, there is no disclosure or suggestion of leaving the cleaning formula on the teeth while an additional material is added to the teeth. Without disclosing that additional treatments can be applied, there is no motivation to apply any additional treatments.

[T]he legal conclusion of obviousness requires that there be some suggestion, motivation, or teaching in the prior art whereby the person of ordinary skill would have selected the components that the inventor selected and used them to make the new device. *C.R. Bard, Inc. v.*

*M3 Sys., Inc.*, 157 F.3d 1340, 1351 (CAFC 1998). Montgomery '144 and Rathbum '056 do not provide any motivation to combine these references. Rathbum '056 lacks any suggestion of adding additional materials to the teeth while the cleaning material is still present, and Montgomery '144 lacks any suggestion of an alternative to dental trays for application of the material. Therefore, it is respectfully submitted that claims 1-16 and 19 are patentable over United States Patent No. 6,958,144 to Montgomery in view of United States Patent No. 2,439,056 to Rathbum.

Claims 1-4, 6-11, 13-16, and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,958,144 to Montgomery in view of United States Patent No. 4,665,901 to Spector.

At the top of page 5 in the office action, it is asserted that "it may be concluded the bicarbonate may touch the surface of the teeth first if pressure is not high enough to rupture the peroxide and the sponge would be able to absorb saliva thereby reaching the teeth." The only way this would occur is if the applicator were held against the teeth with no pressure so that the weakened zone 15 would not rupture. This would have to be done for a long enough period of time so that saliva could diffuse through the sponge like absorbent material 17 to contact and mix with the dry sodium bicarbonate 18 to form a slurry. The slurry would then need a driving force to diffuse through the saliva soaked sponge. If pressure were applied at this point to provide the driving force, the weakened zone would rupture, and the hydrogen peroxide would mix with the sodium bicarbonate.

Spector '901 does not provide any motivation to just hold the applicator against the teeth with no pressure for a period of time sufficient to allow the sponge to absorb saliva, mix with the sodium bicarbonate to form a slurry, and have a driving force to move the slurry through the sponge without mixing with the hydrogen peroxide. Spector '901 actually teaches away from this in stating that pressure is applied to the applicator to rupture the weakened zone so that the hydrogen peroxide and sodium bicarbonate mix (column 4, lines 1-12). There is no disclosure or suggestion of using the applicator to apply sodium bicarbonate by itself.

The combination of Spector '901 with Montgomery '144 would not suggest the application of a preconditioning agent with an absorbent fabric. The combination of these references would teach away from the claimed invention in that Spector '901 describes the situation in which the materials are kept separate and only mixed just prior to use. Therefore, it

is respectfully submitted that claims 1-4, 6-11, 13-16, and 18 are patentable over United States Patent No. 6,958,144 to Montgomery in view of United States Patent No. 4,665,901 to Spector.

Claim 17 was rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,958,144 to Montgomery in view of United States Patent No. 2,439,056 to Rathbum as applied to claims 1-16 and 19 above, and further in view of United States Patent No. 5,891,453 to Sagel et al. Claim 17 depends from claim 10. From above, claim 10 is patentable over the cited references. Therefore, claim 17 is patentable over the cited references.

In view of the remarks contained above, Applicants respectfully request reconsideration of the application, withdrawal of the 35 U.S.C. §103 rejections, and request that a Formal Notice of Allowance be issued for claims 1-34. Should the Examiner have any questions about the above remarks, the undersigned attorney would welcome a telephone call.

Respectfully submitted,

Shastry *et al.*

/Michael F. Morgan/

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